

## Division of Water Resources Regulation Compliance Policy

### Purpose

This policy is intended to provide staff with guidance in addressing and resolving compliance issues associated with discharges to waters of the state. This document incorporates the overarching goals and principles identified in the Department's Compliance Policy (see Appendix A). It is the intent of the Water Resources program to resolve compliance problems at the lowest possible level using the most appropriate tool available given the circumstances of each particular case.

### Introduction

In review of violations and decision criteria, staff must take into consideration the factors unique to each specific case. The underlying principle is that thoughtful consideration be given to the circumstances of each violation or incident within a general framework of appropriate responses. Informal, cooperative efforts to address minor or non-recurrent problems in support of voluntary compliance are the preferred option. All staff are encouraged to seek out opportunities to eliminate discharges or improve treatment plant performance through pollution prevention, technical assistance and outreach activities.

Consistent with the Department Compliance Policy, more significant compliance problems call for more structured responses which increase progressively with the magnitude, frequency or duration of compliance problems. There are certain violations which must be considered serious events for which formal enforcement actions will be considered as appropriate first responses. Such events include, but are not limited to, one time spills causing environmental impacts; repeated or continuing violations; instances where violations result in competitive or economic windfalls; intentional violations; the need for binding compliance schedules; or situations where program policies or precedents must be reinforced.

### Roles/Responsibilities

Field Services. Inspection staff in the water program have the initial and primary responsibility to ensure ongoing compliance with applicable water rules/statutes and waste discharge license limits, schedules and other narrative requirements. Compliance is ensured through routine reviews of discharge monitoring reports, site investigations, facility inspections, education, technical assistance or outreach and by using the tools and procedures outlined in this policy. The inspectors' review and actions to prevent or correct problems are the most

important element of an effective compliance strategy. If the individual staff person is unable to obtain a satisfactory resolution, or if the violation warrants formal enforcement action, the case is forwarded to the Noncompliance Review Committee (NCR) or to enforcement section.

Enforcement. Where a person does not satisfactorily respond to individual staff efforts to achieve compliance, or if formal enforcement actions are warranted due to the nature of a violation, the enforcement section will assume primary project management responsibility. However, the enforcement staff will work in concert with other staff having technical or program expertise needed for resolution of the violation. Inspectors or other staff will remain as the primary contacts for normal activities not related to the pending enforcement action.

Non-Compliance Review Committee (NCR). The NCR committee meets monthly and is comprised of the division director, section heads from each of the regional offices, enforcement staff, licensing staff, and a representative from the Division of Engineering and Technical assistance (DETA). The NCR process serves as the primary vehicle for reviewing/discussing compliance status of all licensed municipal and industrial waste water treatment facilities. Violations, or potential violations, are placed on each month's agenda by facility inspectors based upon reviews of inspection reports, discharge monitoring reports, or at the request of a staff person or a committee member. In addition to considering violations, the NCR committee may focus on technical assistance and pollution prevention strategies in an effort to prevent violations and improve treatment plant performance. The NCR committee may also review policy or program issues. (See Appendix B.)

Quarterly Non-Compliance Review (QNCR). This is a quarterly compliance review process with the US EPA to focus on "major" and selected "significant minor" municipal/industrial wastewater treatment facilities. The enforcement and inspection section heads in the Augusta office participate with EPA in discussions about facilities that meet EPA's criteria of "significant non-compliance" (SNC). Formal enforcement actions will be initiated by EPA (or DEP upon agreement by both parties) for failure to correct SNC problems occurring in any two consecutive quarters. (See generally EPA/DEP Performance Partnership Agreements.)

Citizen Complaint Response and Tracking. Enforcement staff in the water program maintain the Complaint Tracking System (CTS) and serve as project managers for most water related complaint reports. Each year, the Bureau receives a number of citizen complaints which allege violations of environmental laws, licenses or permits, or describe perceived water quality problems. Of these, the Division of Water Resource Regulation responds to those that deal with water quality or with discharges of pollutants. Complaints involving forestry operations, siltation or erosion are addressed by the Division of Land Resource Regulation. Within the Augusta region, the enforcement section is charged with primary response to all water complaints except

those involving a treatment plant assigned to one of the field inspection staff, or those which describe fish kills. In regional offices, there are no WRR enforcement staff, so the field staff are responsible for resolution of complaints unless formal enforcement action is necessary. A Department-wide CTS database is used for tracking assignment, case progress and resolution of complaints, as well as assessing program performance and generating standard and customized reports. All staff persons receiving complaints are responsible for completing a Complaint Form to ensure the problem being reported is logged and can be tracked.

Compliance Tracking System. A new compliance data base system is currently being developed and will be piloted in 1998 using 3 municipal facilities from the So. Maine region. Violations of license conditions, responses and actions by treatment plants will be tracked electronically and integrated into NCR meetings.

### Overview of Compliance Program Elements

The compliance process consists of five elements which work in concert with one another to identify compliance problems, initiate actions appropriate to the seriousness of the problem and track the success of those actions. The elements are:

1. Compliance Review Criteria - identifying a potential or current violation;
2. Seriousness of Violations - evaluating the magnitude of a violation;
3. Possible Compliance Tools - a range of actions which may be taken;
4. Compliance Actions for Specific Violations - matching the seriousness of a violation to an appropriate compliance tool; and
5. Review of Progress and Time Frames - measures of progress in abating or preventing violations and time guidelines.

### **1. Compliance Review Criteria**

The following table lists some of the more common categories of compliance problems which may be encountered, and criteria which trigger a compliance review. It is important to note that these triggers are not the points at which any particular action should be taken. Rather, they are intended to ensure an organized review to determine what action, if any, should be taken in particular situations. In addition to the specifics listed below, consideration must be given to the factors listed in item 4, below, Compliance Actions for Specific Violations to determine what action is necessary in a given case.

-----Table I, Types of Violations and Review Criteria Triggers-----  
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		<b>NCR REVIEW</b>	
<b>Limitation or Requirement</b>	<b>Pollutant or Criteria</b>	<b>Degree or Severity of Violation</b>	<b>Frequency of Occurrence or Duration</b>
Monthly Average	Conventional	>40% over limit	Monthly
	Non-Conventional	>20% over limit	Monthly
	All pollutants	Any amount	2 months in 6
Daily Maximum (with or without monthly average limit)	Conventional	>40% over limit	Monthly
	Non-Conventional.	>20% over limit	Monthly
	All pollutants	Any amount	2 months in 6
Any Discharge	Potential to cause impact	Any event	As occurs
Permit, compliance or judicial order schedules. Periodic reports: pretreatment, etc	All major milestones	Any event more than 30 days overdue	As occurs
Monitoring Reports	DMRs	All reports	By the end of the following month
Compliance Orders	Interim effluent limits	Any amount	As occurs
Toxicity	WET / PP	Any exceedence	Monthly
Non-reported parameters	Any test	More than 30 days overdue	Monthly
Failure to renew license	All licenses	More than 30 days overdue	Monthly
Water quality criteria	All ambient standards	All events	As occurs
Unlicensed discharges	All types, incl. Spills or bypasses	Any amount	Monthly

DEP definition of pollutant groups (differs from EPA):

Conventional Pollutants: BOD, COD, TOC, TSS, Settleable Solids, Oil & Grease

Non-Conventional Pollutants: Metals, Nutrients, TRC, Organics

## **2. Seriousness of Violations.**

Compliance issues can be divided into four types giving consideration to the nature and seriousness of the problem:

-----**Table II, Levels of Violations**-----

Type	Magnitude	Possible Circumstances
A	No actual violation	There may be an up-coming compliance milestone, a trend of diminishing performance, or a need for improvements to meet new requirements.
B	Low	An isolated incident or minor schedule problem. There is little risk for impact or the incident is marginally over applicable standard of performance. The event was largely unforeseeable and was addressed quickly to correct the problem.
C	Medium	Repeat of previous or related incident, but no clear long trend of noncompliance. The activity was moderately over applicable standard of performance or there was only limited risk for impact. Corrections were adequate and taken in an acceptable time frame with reasonable cooperation.
D	High	Continuing or frequent problem or seriously over applicable standard of performance. The discharge has high risk for or did cause actual impact. The event was a foreseeable incident which could have been reduced or prevented by normally expected actions. Corrections or responses were either slow or inadequate. An unmitigated violation of a schedule in a Department or Court order. Any negligent or criminal act.

### **3. Possible Compliance Tools.**

Depending on the circumstances in a specific case, there is usually a range of responses which can be considered. These can be broken into six groups as outline below. Each group contains three or more actions which are about equal in terms of seriousness.

-----**Table III, Groups of Compliance Responses**-----

GROUP	POSSIBLE RESPONSES
1	Monitor for recurrence or effectiveness of actions already taken Adjust license limits or schedule to fit situation Informal inspection or telephone call General pollution prevention assistance / referral to P2 unit General educational assistance / referral to technical assistance unit
2	Documented phone call - verbal agreement on appropriate actions Acceptable letter of explanation with self reported violation Directed site visit or inspection Letter of notification for up-coming schedule event or toxicity program
3	Formal, documented compliance meeting Technical assistance visit or program directed to specific problem Training or educational program directed at specific problem Formal written request for information
4	Letter of warning Notice of violation Letter of commitment or contracts for completion of remedial work
5	Compliance order by consent Consent agreement Referral to EPA for administrative compliance order or penalty
6	Referral to AG (Superior or Administrative court) Referral to EPA for action federal court Rule 80(k) Enforcement hearing

Note: Informal, cooperative efforts to address minor problems in support of voluntary compliance are the preferred route when appropriate. Even beyond any incidents of non-compliance, all staff are encouraged to proactively seek out opportunities improve to performance using educational and pollution prevention opportunities.

#### **4. Compliance Actions for Specific Violations.**

In review of violations and deciding what action(s) should be taken, thoughtful consideration must be given to the circumstances of a particular situation within a general framework for appropriate responses. In general, with the objective of addressing violations at the lowest appropriate level, staff should err on the side of selecting the least formal response which is appropriate. Table IV below combines the types of violations and criteria from Table I with the levels of violations from Table II and possible compliance responses from Table III. When selecting the appropriate course within a range of possible responses for various types of violations, a number of factors must be considered, including:

- The circumstances which led up to the violation
- How the violation was discovered (self reported, citizen complaint, etc.)
- The actions taken to prevent, stop or mitigate the violation
- The degree to which the violation could be foreseen
- The history of past violations, including other programs administered by DEP
- The history of Department communications and efforts to prevent the violation
- The person's expected knowledge of applicable rules and standards



-----Table IV, Violations and Compliance Responses-----

DEP Review Criteria	Violation Level and Possible Compliance Tools	NOTES
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Type of Limitation or Requirement	Pollutant or Criteria	Degree or Severity of Violation	Frequency of Occurrence or Duration	A	B	C	D	
Monthly Ave.	Conventional	≥20% over permit	Monthly	1-3	2-4	3-5	5-6	Parallels EPA Criteria
Monthly Ave.	Non-Conv.	Any amount over permit	Monthly	1-3	2-4	3-5	5-6	Parallels EPA Criteria
Monthly Ave.	All pollutants	Any amount over permit	2 mo in 6 mo	1-3	2-4	3-5	5-6	Parallels EPA Criteria
Daily Max. (no monthly ave. limit)	Conventional	≥20% over permit	Monthly	1-3	2-3	3-5	4-6	Parallels EPA Criteria
Daily Max. (no monthly ave. limit)	Non-Conv.	Any amount over permit	Monthly	1-3	2-3	3-5	4-6	Parallels EPA Criteria
Daily Max. (no monthly ave. limit)	All pollutants	Any amount over permit	2 mo in 6 mo	1-3	2-3	3-5	4-6	Parallels EPA Criteria

Daily Max. (w/ monthly ave. limit)	Conventional	≥20% over permit	Monthly	1-3	2-3	3-5	4-6	Parallels EPA Criteria
Daily Max. (w/ monthly ave. limit)	Non-Conv.	Any amount over permit	Monthly	1-3	2-3	3-5	4-6	Parallels EPA Criteria
Daily Max. (w/ monthly ave. limit)	All pollutants	Any amount over permit	2 mo in 6 mo	1-3	2-3	3-5	4-6	Parallels EPA Criteria
Any Discharge	All pollutants	Potential to cause water quality or human health impact	All events	--	--	4-5	5-6	
Permit Schedules	All major milestones	Check at least 30 days prior to deadline	All events	1-3	2-3	4-5	6	
Periodic reports: pretreatment, etc.	Final reports	Check at least 30 days prior to deadline	All events	1-3	2-3	4-5	6	
Reporting	DMRs	By 30th of month	All reports	--	2-3	4-5	5-6	
Judicial Order	All schedule or limits	Any amount	All events	1-3	4-5	5-6	6	
Adm. Order / CA	Interim effluent limits	Any amount	All events	--	2-3	4-5	5-6	Primarily EPA criteria

Adm. Order / CA	All major milestones	Check at least 30 days prior to all deadlines	All events	1-3	2-3	4-5	6	
Toxicity	WET / PP	Any exceedence	Within 30 days of report	--	2-4	--	--	Notification letter; begin TRE
Toxicity	WET / PP	RP determination	Within 30 days of report	--	2-4	--	--	Notification letter
Effluent monitoring	Any test	More than one regular or any special test	Per monitoring period	--	2-3	3-4	5-6	
Failure to renew license	All licenses	More than 30 days past expiration	As occurs	--	2-3	3-4	5-6	
Spills & bypasses	All events	Any amount	As occurs	--	2-3	3-4	5-6	
Water quality criteria	All ambient standards	Any amount due to specific discharges	As occurs	--	2-4	3-5	5-6	
Unlicensed discharges	All types, exc. spills/bypasses	All incidents	Upon initial discovery	--	2-4	3-5	5-6	

## **5. Review of Progress and Time Frames.**

Once a response to a compliance problem is selected, the effectiveness of that response is tracked by the individual staff person, the NCR committee or the Enforcement Section. (In some cases, the review responsibility may shift with changes in the circumstances of a particular case.) The goal is to assure that the response brings appropriate and satisfactory action to end or prevent violations in an acceptable time frame. In general, this progress will fall into one of three categories.

1. The response initially selected makes effective and timely progress toward full compliance. Essentially, the responsible party is doing what need to be done on an acceptable schedule.
2. The response initially selected is partially effective and definite progress toward full compliance is being made, although perhaps not in the time frame initially expected. A different or additional response in the same or a comparable group may be necessary to support and expedite progress or help to accommodate relatively minor changes in the specific situation. These changes can be viewed as mid-course corrections in a resolution which is basically working.
3. The response initially selected is not bringing the expected results, new violations have occurred or existing one(s) have continued or become worse. In these cases, a more aggressive response is necessary. One should be chosen from a group at least one level higher than that used initially. For example, if the discharge from a treatment facility had a record of sporadic, minor violations, a level B response would likely be appropriate for such a case. If, despite a response having been taken, the violations become more frequent, a level C response at a higher group would be called for.

For most issues, progress will be reviewed at least every 30 days; for the majority of the cases, the NCR meeting will be the vehicle to complete such periodic reviews. The time expectations for completion of a compliance response will vary greatly with the individual problem(s) being addressed. Simple matters may be fully addressed with the exchange of letters. Complicated facility or sewer system improvements may require several years of construction. A technical assistance project may be completed in a relatively short time, but lead to a more lengthy implementation schedule for recommended improvements. In order to accommodate such variability, periodic reviews are needed to assure reasonable progress and the flexibility to adapt or escalate responses. Upon initiating a response, satisfactory progress should be seen within 30 days for groups 1 and 2, within 60 days for groups 2 - 4 and within 90 days for groups 5 and 6. The progress in each case will be documented in the project file, and as appropriate, in NCR meeting notes, enforcement status reports or other tracking systems such as the Complaint Tracking System, the Compliance Tracking System or the Permit Compliance System.